

APPEAL NO. 040809
FILED MAY 27, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 16, 2004. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter, December 5, 2003, through March 4, 2004, and that the claimant is entitled to SIBs for the fourth quarter, March 5 through June 3, 2004. The appellant (carrier) appealed, disputing the determination that the claimant is entitled to SIBs for the fourth quarter. The claimant responded, urging affirmance of the disputed determination. The determination that the claimant is not entitled to SIBs for the third quarter was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs. The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on June 13, 2002, with an impairment rating of 17%; that the claimant did not commute any portion of the impairment income benefits; and that the qualifying period for the fourth quarter began on November 22, 2003, and ended February 20, 2004. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(d)(2), and the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1).

The carrier asserts that the claimant's unemployment during the qualifying period was not a direct result of his impairment. We have noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is sufficiently supported by evidence if the injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in lasting effects and that, as a result thereof, the claimant could no longer reasonably work as a truck driver.

With regard to the good faith criterion, the hearing officer found that as a result of his enrollment in, and satisfactory participation in, a Texas Rehabilitation Commission (TRC) Individualized Plan for Employment (IPE), the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fourth quarter. See Rule 130.102(d)(2). The hearing officer concluded that the claimant is entitled to SIBs for the fourth quarter. The carrier argues that the hearing

officer was required to address the other requirements of the IPE other than the academic requirements. The carrier argues "the claimant's testimony indicates he did nothing that he had not been doing to increase his physical stamina" and argues that no documents were presented to show he applied for a Pell Grant. The claimant testified that he had been doing exercises recommended by his doctors to increase his physical stamina and that he had applied for a Pell Grant. The Appeals Panel stated that the 1989 Act does not require that the Decision and Order of the hearing officer include a Statement of the Evidence and that omitting some of the evidence from a Statement of the Evidence did not result in error. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000, citing Texas Workers' Compensation Commission Appeal No. 94121, decided March 11, 1994. The failure to summarize all of the evidence in the Decision and Order does not indicate reversible error. In reaching her decision, the hearing officer could consider the medical records in evidence; the TRC IPE; and the claimant's testimony. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge